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DE RUEHJM #0765/01 1281216
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FM AMCONSUL JERUSALEM
TO RUEHC/SECSTATE WASHDC PRIORITY 1395
INFO RUEHKK/ARAB ISRAELI COLLECTIVE PRIORITY
RHEHNSC/WHITE HOUSE NSC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 JERUSALEM 000765

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NEA FOR FRONT OFFICE. NSC FOR ABRAMS/SINGH/PASCUAL

E.O. 12958: DECL: 05/06/2018
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SUBJECT: HIGH COURT REJECTS AL-AQABAH'S PETITION

REF: JERUSALEM 650

Classified By: Consul General Jake Walles, per reasons 1.4 (b) and (d)

¶1. (C) Summary. On April 26, the Israeli High Court of Justice (HCJ) rejected Khirbet al-Aqabah's petitions to rescind demolition orders issued against 11 structures, but said "for the time-being" the Civil Administration will not demolish the mosque, kindergarten, women's center, clinic, and three homes built within a limited radius from the center of town. Mayor of al-Aqabah Haj Sami Sadeq told Poloff on May 5 that at least 15 homes located outside the circle risk immediate demolition by the IDF. Attorney Abdullah Hammad told Poloff May 6 that he will submit a master plan for al-Aqabah, which includes the 35 structures for which there are pending demolition orders, to the West Bank Civil Administration for approval. If the Civil Administration rejects the plan, he intends to appeal the case in court. End Summary.

High Court Rejects Petition

¶2. (C) On April 17, the Israeli High Court of Justice (HCJ) heard Khirbet al-Aqabah's petitions (HCJ 143/04 and HCJ 8440/04) to rescind 11 demolition orders issued against eight private homes, a mosque, women's center, and kindergarten. Al-Aqabah residents also petitioned the HCJ to freeze the demolition orders for 24 months while residents prepare a new master plan. On April 26, the HCJ rejected the petition and said al-Aqabah village council does not have "permission for chaotic building and setting facts on the ground that may create obstacles for future planning." The ruling also stated that "revoking the demolition orders is like authorizing the building offenses." The HJC referred to the Civil Administration proposal to freeze demolition orders for the mosque, kindergarten, women's center, clinic, and three homes built within a limited radius from the center of town and said also on April 26 that the Civil Administration is "not planning to demolish them for the time-being."

Next Step: Submit New Master Plan

¶3. (C) Abdullah Hammad, attorney and director of the Jerusalem Legal Aid and Human Rights Center, told Poloff May 6 that he is working with the Israeli NGO Bimkom Planners for Planning Rights to draft a master town plan that includes the 35 structures in al-Aqabah that have pending demolition orders. Within two weeks, Hammad will submit the revised master plan to the West Bank Civil Administration for approval. He said the Civil Administration argued during the April 17 hearing that they cannot issue building permits for al-Aqabah structures, because the village council never filed a comprehensive town plan. Hammad said "the master plan is the solution for al-Aqabah," but if the Civil Administration rejects it, he will appeal to the HCJ. (Note: Abdullah Hammad replaces attorney Elia Tusya Cohen, who was hired by

the American NGO The Rebuilding Alliance, to represent al-Aqabah residents. On April 30, Hammad was hired directly by al-Aqabah village council. On May 4, Minister of Information Riad al-Malki told press that the PA will give 30,000 USD to al-Aqabah village council to cover legal fees. End Note).

Homes Outside Circle Fear Demolition

¶4. (C) Mayor of al-Aqabah Haj Sami Sadeq told Poloff on May 5 that twenty percent of al-Aqabah's land falls within the circle proposed by the Civil Administration and that at least 15 homes are located outside. He said these homes risk immediate demolition by the IDF and added that several families of ten live outside the circle. On May 6, Hammad told Poloff that salvaging the structures within the circle does little good as most residents live outside the circle. He noted that if the homes outside the circle are demolished and al-Aqabah residents leave the village, the structures inside the circle, including the mosque, kindergarten, and women's center, will remain empty and useless.

Comment

¶5. (C) Post understands that Khirbet al-Aqabah is on the list of 25 Area C town plans slated for GOI approval. However, as of May 6, neither Mayor Sadeq nor attorney Hammad had heard about pending or confirmed approval. Post has received numerous Congressional requests for updates on al-Aqabah, and after the April 26 ruling, the Rebuilding

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Alliance told Post that that it has urged Congressional staff to contact the Israeli Embassy in Washington to encourage the Civil Administration to approve al-Aqabah's town plan and issue building permits retroactively. Al-Aqabah is in the greater Jenin area, which may have contributed to the PA decision to fund its legal fight. GOI home demolitions there will command significant attention, given the PA's new effort to bring law and order and to make the PA the responsible authority.

WALLES